IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. ~~78-~~ 1856

ROLAND T. DORL
Petitioner

vs.

FOSTER WHEELER CORP.
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Jonathan A. Weiss
LEGAL SERVICES FOR
THE ELDERLY POOR
Counsel for Petitioner
2095 Broadway, Room 304
New York, New York 10023

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The petitioner, ROLAND T. DORL, respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Third Circuit, entered in this proceeding on March 20, 1979.

OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit, as yet unreported, appears at Appendix A, infra, pp.A_1 - A_6. The Letter-Opinion of the District Court for the District of New Jersey, nor reported, appears at Appendix B, infra, pp. B_1 - B_7.

JURISDICTION

The judgment of the Court of Appeals was entered on March 20, 1979 (Appendix A, infra, pp.A_1-A_6. This petition for certiorari was filed within 90 days from that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) (1976).

QUESTIONS PRESENTED

Where the district court, in granting summary judgment, held that petitioner's age discrimination and 42 U.S.C. 1981 claims were time-barred and that he had failed to state a Title VII discrimination claim:

1. On appeal from summary judgment, did the court of appeals violate the remedial provisions underlying Title VII, the Age Discrimination in Employment Act (ADEA) and 42 U.S.C. 1981, the dictates of due process; as well as violate appellate court duties by deciding the merits of a pro-se litigant's discrimination and reprisal claims when the district court did not resolve those issues, and when no evidence was before the appellate court justifying denial?

2. Does not a timely Application for Counsel and for Perpetuation of Testimony and a letter from the assigned federal judge that there was "an active case sub-judice" toll the statute of limitations?

3. Do not equitable considerations and Federal Rules of Civil Procedure 1 in a case filed in 1974 and opposed by respondent and, subsequently, following two (2) years of discovery, bar a 1978 defense of statute of limitations invoked just weeks before trial?

4. Is not the limitations period on 42 U.S.C. 1981 claims, alleging discrimination in breach of contractual employment rights, governed by the state contract statute of limitations when interpreted by a federal court; and must not conflict thereon among the circuits be resolved by this Court?

The ADEA Act 29 U.S.C. 623, Section 4, (1978) provides in pertinent part:

Sec. 4(a) It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age.

Sec. 4(d) It shall be unlawful for any employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual member, or applicant for membership, has opposed any practice made unlawful by this section, or because such individual, member, or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this Act.

The ADEA Act, 29 U.S.C. 629, Section (e), (1978) provides:

(1) Sections 255 and 259 of this title shall apply to actions under this chapter.

(2) For the period during which the Secretary is attempting to effect voluntary compliance with requirements of this Act through informal methods of conciliation, conference, and persuasion pursuant to subsection (b), the statute of limitations as provided in section 6 of the Portal-to-Portal Act of 1947 shall be tolled, but in no event for a period in excess of one year.

Section 703 (a) of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. 2000e-2(a) (1976), provides:

(a) It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, or national origin.

Section 704 (a) of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. 2000e-3(a) (1976), provides:

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title (2000e-2000e-15 of this title), or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title (2000e-2000e-15 of this title).

42 U.S.C. 1981 (1976) provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

Federal Rules of Civil Procedures provide:

Rule 1 - Scope of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Fed. R. Civ. P. Rule 27(a) (1) provides:

(a) Before action.

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the United States may file a verified petition in the United States district court in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1. that the petitioner expects to be a party to an action cognizable in a court of the United States, but is presently unable to bring it or cause it to be brought; 2. the subject matter of the expected action and his interest therein; 3. the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; 4. the names or a description of the persons he expects will be adverse parties and their addresses so far as

known, and 5. the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

Fed. R. Civ. P. Rule 56(c), pertaining to summary judgment, provides in pertinent part:

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Supreme Court Rule 19, provides in pertinent part:

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

New Jersey Stat. Ann. 2A:14-1 (West Cum. Supp. 1978) provides:

Every action at law for trespass to real property, for any tortious injury to real or personal property, for replenishing of goods or chattels, for any tortious injury to the rights of another not stated in sections 2A:14-2 and 2A: 14-3 of this title, or for recovery upon a contractual claim or liability, express or implied, not under seal --- shall be commenced within 6 years next after the cause of any such action shall have been accrued.

STATUTES AND RULES INVOLVED

New Jersey Stat. Ann. 2A:14-2 (West Cum.Supp.(1978)
2 years; actions for injuries to person by wrongful act.

Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this state shall be commenced within 2 years next after the cause of any such action shall have accrued.

STATEMENT OF THE CASE

Respondent terminated petitioner's employment immediately upon return from hospitalization in September 1972, shortly after petitioner lodged complaints of discrimination with the New Jersey Commission on Civil Rights and the U.S. Equal Employment Opportunity Commission (EEOC). Subsequent to his discharge, petitioner filed additional charges with the EEOC and U.S. Department of Labor (D.O.L.), alleging his dismissal and a previous warning letter were unlawful reprisals for filing his earlier complaints. Fearing that certain evidence would be lost during the pendency of lengthy administrative proceedings, petitioner in April 1974 filed a pro se application in the District Court for the Southern District of New York for the Perpetuation of Testimony under Fed. R. Civ. P. 27(a) and for the Appointment of Counsel. The application was assigned to the Hon.

Judge Constance B. Motley, who wrote petitioner in November 1974 that the matter was being treated as "an active case sub judice" (Appendix C, infra, pp. C). Petitioner relied on her decision in the case. Over two (2) years later, in June 1976, she denied the application. (Appendix D, infra, pp. D_1 - D_6).

In April 1976, prior to Judge Motley's decision, the EEOC issued a right-to-sue notice. A pro-se complaint was filed in May 1976 in the New Jersey District Court, with an amended complaint filed in January 1977. The complaint and amended complaint charged respondent with unlawful reprisal and discrimination on race, color, religion, and national origin in violation of Title VII; age discrimination in violation of the Age Discrimination in Employment Act (ADEA), violation of petitioner's civil rights under 42 U.S.C. 1981 (1976). Jurisdiction was based on

28 U.S.C. 1331, 1332, 1343 (4) (1976), and 42 U.S.C. 2000e-5 (f) (3) (1976). Appendix E; infra E_1 - E_{12}.

After nearly two years of discovery and just five weeks before the scheduled trial date, respondent moved for summary judgment "on all of plaintiff's claims." In a Letter-Opinion of April 17, 1978, the Hon. Judge Herbert J. Stern, without any hearing, granted respondent's motion (Appendix B, pp. B_1-B_7). Judge Stern held that petitioner's ADEA and 42 U.S.C. 1981 claims were time-barred, and that petitioner failed to state a discrimination claim under Title VII. Judge Stern did not consider whether petitioner's earlier case before Judge Motley tolled the applicable statutes of limitation, nor did he discuss the viability of petitioner's reprisal claims under Title VII, or the ADEA.

The Third Circuit affirmed without oral argument (Appendix A, infra, pp. A_1-A_6) and did so without ad-

dressing the statute of limitations questions central to the district court's decision. Despite absence of any fact-finding by the district court on the 42 U.S.C. 1981, ADEA, and reprisal claims, and the existence of genuine issues of material fact as to those claims, the court of appeals concluded in a per curiam opinion that petitioner's charges of discrimination "lack(ed) substance" and that his reprisal claims were similarly without merit.

In none of the administrative proceedings, state, EEOC or D.O.L. were reprisal claims considered (Appendix D_4). In none of the district court proceedings were the reprisal claims considered (Appendix B). Yet, despite strong statutory provisions barring reprisals, the Third Circuit dismissed the reprisal claims under the guise that the respondent was "unaware" of the admitted pre-discharge discrimination claims. (Appendix A).

REASONS FOR GRANTING THE WRIT

1.

The Court of Appeals Erred in Making Unsupported Finding of Facts for Summary Judgment, Foreclosing the pro-se Petitioner from Proper Judicial Consideration, thereby Violating Due Process and the Central Purposes of the Anti-discrimination Acts.

The record below indicates disputed issues of material fact relating to petitioner's ADEA, 42 U.S.C. 1981 and reprisal claims, which were all left unresolved by the district court and perhaps not even considered since a hearing was denied. Yet, the court of appeals, in affirming the district court's judgment explicitly decided those very issues (Appendix A, infra. pp. A_1-A_6). Such action fundamentally conflicts

with the standards set forth for the appellate review of summary judgments in United States v. General Motors Corp., 518 F.2d 420, 440-42 (D.C. Cir. 1975), and Heirs of Fruge v. Blood Services, 506 F.2d 841, 844 (5th Cir. 1975), and conflicts in principle with this Court's holding in Fountain v. Filson, 336 U.S. 681, 683 (1949). This extreme departure from the accepted and usual course of judicial process calls for the exercise of this court's supervisory authority to prevent the same problem from arising again.

Summary judgment in anti-discrimination cases is generally disapproved, see Logan v. General Fireproofing Co., 521 F.2d 881, 883 (4th Cir. 1971); see Kornbluh v. Stearns & Foster Co., 73 F.R.D. 307, 312 (S.D. Ohio 1976). This is for good reason. Summary judgment is a harsh sanction, particularly inappropriate where "the statutory scheme contemplates achievement of its goals through the efforts of

laymen," as all the anti-discrimination laws do. Kohn v. Royall, Koegel & Wells, 59 F.R.D. 515, 518-19 & n.5 (S.D.N.Y. 1973), appeal dismissed, 496 F. 2d 1094 (2d Cir. 1974); see Newman v. Piggie Park Enterprises, 390 U.S. 400, 401-02 (1968); Smith v. Josten's American Yearbook, 78 F.R.D. 154, 161 (D. Kas. 1978). "The individual claimant takes on the mantle of the state in seeking to rectify wrongs against himself and others." Kohn v. Royall, Koegel & Wells, supra, at 519. This mantle must be preserved.

The courts have therefore been extraordinarily flexible when dealing with procedural irregularities in private enforcement suits, refusing to place "unnecessary stumbling block(s) in the private litigant's path" and rejecting defendants' "hypertechnical and overly legalistic" arguments. Voutsis v. Union Carbide Corp., 452 F.2d 889, 892 & 893 n.8 (2d Cir. 1971), cert. denied, 406 U.S. 918 (1972). These consider-

ations are especially compelling where, as in petitioner's case, the private litigant acts pro se and is therefore unable to frame the pleadings and affidavits as artfully as an attorney presumably would. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Jackson v. Statler Foundation, 496 F.2d 623, 636 (2d Cir. 1974) cert. denied, 420 U.S. 927 (1975); Gautam v. First Nat'l City Bank, 425 F. Supp. 579, 581 (S.D. N.Y. 1976), aff'd mem. 573 F.2d 1290 (2d Cir. 1977).

Against this background, the Third Circuit unquestionably placed an "unnecessary stumbling block" in petitioner's path. As this Court held in Fountain v. Filson, 336 U.S. 681 (1949) a circuit court, in reviewing a grant of summary judgment, cannot deprive a litigant of the opportunity to "dispute the facts material to a claim" that had not been considered by the district court. Id. at 683. The District of Columbia Circuit, drawing on Fountain, recently warned when

an appellate court upholds a grant of summary judgment "under a legal theory different from that applied by the trial court," it must do so "cautiously so as to avoid denying the opposing party a fair 'opportunity to dispute the facts material' to the new theory." United States v. General Motors Corp., 518 F.2d 420, 441 (D.C. Cir. 1975) quoting Fountain v. Filson, supra at 683).

Unfortunately, the Third Circuit discarded such caution in petitioner's case. Rather than determining whether there existed "genuine issue(s) as to any material fact," per Fed. R. Civ. P. 56(c), as is required on a motion for summary judgment, the appeals court resolved issues on which there were material factual disputes, and on which petitioner could prevail, if allowed to prove his case.

One particularly egregious example is the Court's handling of petitioner's reprisal claims. The record

demonstrates a clear dispute as to whether petitioner's pre-discharge warning letter (his only such one, which came promptly after filing discrimination charges) was the employer's angered attempt to silence the petitioner, or expressed real dissatisfaction with petitioner's work. It must be again noted the warning letter demanded "personal confidence," a phrase which the respondent, upon depositions, claimed to a "typographical error" and was to be "personal competence." Such cannot stand in light of respondent's admissions that petitioner saved six digit sums for them (Appendix B, infra, pp.B_5).

The action of the appellate court on the reprisal issue alone is clearly contrary to this Court's directions that on Title VII reprisals, "section 704(a) forbids discrimination against applicants or employees for attempting to protest" — against discriminatory conditions. See McDonnell Douglas v. Green, 411

U.S. 792 (1973) at pp. 794-796. See also N. L. R. B. v. Scrivener (d/b/a AAA Electric Co.) 405 U.S. 117 (1973) holding that far more than the filing of charges is 'protected activity'. Yet, despite these high court rulings, the Third Circuit dealt with petitioner's reprisal issue by cursorily stating respondent was not "aware" of petitioner's pre-discharge filings! That conflicts with the Supreme Court rulings and the Third Circuit action is clearly contrary to related decisions of other circuits, namely Barela v. United Nuclear, 462 F.2d 149 (10th Cir. 1972); Pettway v. American Cast Iron Pipe Co., 411 F.2d 998 (at pp. 1005-6) (5th Cir. 1969; Drew v. Liberty Mutual Ins. Co., 475 F.2d 579; 480 F.2d 70 (5th Cir. 1972); East v. Romine, Inc., 518 F.2d 332 (5th Cir. 1975). See also the refusal of this court to overturn a Second Circuit reprisal decision in EEOC v. Kallir, Phillips, Ross, Inc., U.S. Sup. Ct. 77-187 (1977); 434 U.S. 920.

Accordingly, the Court must resolve the conflict between the Third Circuit, its sister circuits and decisions of the Supreme Court. See Avco Corp. v. Aero Lodge 735, 390 U.S. 557-559; Northeastern National Bank v. U.S., 387 U.S. 213, 217(1967). See also Supreme Court Rule 19.

On nearly identical facts, another court rejected summary judgment, holding that "in a Title VII case it is sufficient that the plaintiff show that the retaliation played any part in his dismissal; or, stated otherwise, a showing of another sufficient cause does not remove the issue." Kornbluh v. Stearns and Foster Co., 73 F.R.D. 307, 312 (S.D. Ohio 1976). Yet the district court here did not even mention petitioner's reprisal claims in its Letter-Opinion granting full summary judgment. And, the court of appeals reached out to decide the claim on the merits (with no evidence but a firing subsequent to the filing of a discrimination claim).

The court of appeals thus deprived petitioner of the opportunity to present facts to a trial judge and jury regarding reprisal, as well as his other ADEA and 42 U.S.C. 1981 claims, and to dispute the allegations in respondent's appellate brief.* As the Fifth Circuit has admonished, "Where summary judgment is granted on one issue, an appellate court may not extend that judgment to another issue under the guise of affirming the 'result below' when the effect is to preclude the losing party from 'disput(ing) facts ma-

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* "Before summary judgment will be granted it must be clear what the truth is and any doubt as to the existence of a genuine issue of material fact will be resolved against the movant. Because the burden is on the movant, the evidence presented to the Court always is construed in favor of the party opposing the motion and he is given the benefit of all favorable inferences that can be drawn from it. Finally, facts asserted by the party opposing the motion, if supported by affidavits or other evidentiary material, are regarded as true." 10C, Wright & A. Miller, Federal Practice and Procedure 2727, at 526-30 (1973) (footnotes omitted).

terial to that claim.'" Heirs of Fruge v. Blood Services, 506 F.2d 841, 844 (5th Cir. 1975) (quoting Fountain v. Filson, 336 U.S. 681, 683 (1949). Improperly, that is precisely what the court of appeals has accomplished in petitioner's case.

Besides ensuring fairness and judgment on a complete record, the refusal to grant summary judgment in cases such as this one, has firm roots in sound public policy. Courts sit to adjudicate disputes and protect rights and discourage "chilling effects" so that individuals will not be fearsome in reporting discriminatory practices and seek proper redress. It is therefore important that litigants, particularly those acting pro se, are given a chance to prove their case in court, experiencing the adjudicatory process working for them rather than being summarily barred from legal redress. Here petitioner points out that after costly discovery, the courts have shut their

doors to his case. No court or administrative body has reviewed facts or permitted evidence re petitioner's reprisal claims. (Appendix D, infra, pp. D_4).

Precluding a petitioner from trying and proving his case, finding factually against him at an appellate level (in conflict with Supreme Court and appellate court decisions) and ignoring the public-good policies of the anti-discrimination statute, are practices that call for the exercise of this Court's power of supervision.

2.

Petitioner's Timely 1974 Applications for Appointment of Counsel and Petition to Perpetuate Testimony and Judicial Notice by Judge Motley that there was "an active case sub-judice" tolled the Statute of Limitations.

In holding petitioner's ADEA claims time-barred, the district court did not consider or give the requi-

site conclusive effect to his earlier and timely pro se application in the Southern District of New York for Perpetuation of Testimony and Appointment of Counsel. However, this Court's decision in Burnett v. New York Central Railroad Co., 380 U.S. 424 (1965), a Federal Employers Liability Act case, and at least three related Circuit Court decisions, Huston v. General Motors Corp., 477 F.2d 1003, 1008 (8th Cir. 1973), and Harris v. Walgreen's Distribution Center, 456 F.2d 588, 592 (6th Cir. 1972), call for a judicial tolling of the ADEA statute of limitations in these circumstances. In Miller v. International Paper Co. 408 F.2d 283 (5th Cir. 1969) it was held a party should "not be denied of judicial relief because of circumstances over which they have no control." Thus, the petitioner could only await and not control the outcome of the 1974 petitions.

While statutes of limitations are primarily de-

signed to assure fairness to defendants, Burnett v. New York Central Railroad Co., supra, at 428, this Court has acknowledged that such a "policy of repose . . . is frequently outweighed . . . where the interests of justice require vindication of the plaintiff's rights." id.

Statutes of limitation "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared . . . Moreover, the courts ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights." Id. (quoting Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 348-49 (1944). Neither of these important policies are served by here interposing a time-bar. Petitioner's 1974 application made clear his action and intentions: (1) he had properly filed

pre-discharge discrimination and reprisal claims, (2) and filed additional post-discharge discrimination claims, (3) he sought the help of the federal courts to ensure adequate preparation for the lawsuit during "administrative processing of the federal charges" (Motley Opinion, Appendix D, infra, pp. D). Respondent, which answered and defended in the 1974 case, certainly cannot maintain that the 1976 complaint came as a "surprise" or acts as a time-bar. Indeed, the opposite is true.

3.

Equitable Considerations and Federal Rule of Civil Procedure 1 in a Case Filed in 1974 and Opposed by Respondent, and subsequently, Following Two (2) Years of Discovery, Bar a 1978 Defense of Statute of Limitations Invoked Just Weeks Before Trial

The precepts of Federal Rule of Civil Procedure 1 are very clear. That vital rule precedes all others and states that all court rules:

> "...shall be construed to secure the just, speedy and inexpensive determination of every action."

Surely, Rule 1 must constructively bar and estop a summary judgment motion made after two-plus years of discovery and only five (5) weeks before trial. Any claim that summary judgment under Fed. R. Civ. P. 56 can be sought "at any time" must fall to the command of Fed. R. Civ. P. Rule 1. To the effect of necessity for a timely and speedy motion for summary judgment, see Strauss v. Douglas Aircraft, 404 F.2d 1152 (2nd Cir. 1968). In the instant case, a mammoth corporation and its law firm literally strung along the pro-se petitioner (as well as the lower court) in time-consuming, expensive and unjust waste of judicial time spanning over two (2) years. Under the precepts of Fed. R. Civ. P. 1, this must not be permitted.

Furthermore, equitable considerations have led courts of appeals to hold that the filing of an Application for Appointment of Counsel tolls the statutory period for filing suit after receipt of a right to sue letter from the EEOC. Huston v. General Motors Corp., 477 F.2d 1003, 1008 (8th Cir. 1973); Harris v. Walgreen's Distribution Center, 456 F.2d 588, 592 (6th Cir. 1972). The Huston court reasoned a liberal interpretation of the procedural requirements underlying the anti-discrimination acts is absolutely necessary "in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." Love v. Pullman Co., 404 U.S. 522, 527 (1972); see Huston, supra, at 1008. One district court following Harris observed, "Time after time ordinary laymen acting on their own without legal assistance and guided by misleading instructions from the EEOC have filed in a U.S. District Court, some, if not all, of the

papers filed by plaintiff here believing they thus complied with the statutory time limitation." Pace v. Super Valu Stores, Inc., 55 F.R.D. 187 (S.D. Iowa 1972). If defendants are not prejudiced by a tolling of the Title VII limitation period after receipt of a right-to-sue letter, surely respondent cannot claim prejudice or time-bar where petitioner's early application for Perpetuation of Testimony and Appointment of Counsel put defendant on notice to preserve evidence.

Petitioner has not "slept on his rights." The vigor with which he has pursued remedies from date of his discharge nearly seven years ago, indicates quite the contrary. If he was tardy at all, it is only because, uncounselled, he relied on the assurances of a Federal District Judge, who wrote that his application would be "treated as an active case sub judice." (Appendix C, infra, pp. C). What else could petitioner do but to believe a Federal Judge?

In the leading case of Dartt v. Shell Oil Co., 539 F. 2d 1256 (10th Cir. 1976), aff'd by an equally divided court, 434 U.S. 99 (1977) (Mem.) (per curiam), the Tenth Circuit concluded that a lay plaintiff's uncounselled pursuit of her ADEA claim to the best of her ability provided grounds for an equitable tolling of the ADEA's 180-day "notice of intent to sue" requirement. Id. at 1260-62. The same considerations are applicable here and this Court itself has upheld the finding.

> "...(t)he ADEA is remedial and humanitarian legislation and should be liberally interpreted to effectuate the congressional purpose of ending age discrimination in employment." Dartt at 1260.

Indeed, the Judge below, Hon. Herbert Stern, concurred to such remedial philosophy when sitting in Bonham v. Dresser, Ind., 569 F. 2d 187 (3rd Cir. 1976).

The interests of justice, therefore, compel an equitable tolling of the ADEA's purported two-year statute of limitations in this case.

The Limitations Period for 42 U.S.C. 1981 Employment Discrimination Cases is Governed by the States' Contract Statutes of Limitations and not "injury" laws; and Conflicts thereon among the Circuit Courts of Appeals must be Resolved by this Court.

Because Congress has not prescribed a limitations period for actions brought under 42 U.S.C. 1981 (1976), this Court has stated that "the controlling period would ordinarily be the most appropriate one provided by state law." Johnson v. Railway Express Agency, 421 U.S. 454, 462 (1975). As State law has been incorporated into the scheme of federal civil rights legislation, this Court should now provide guidance to the lower federal courts and resolve conflicts among various circuits. Such guidance would

clearly aid courts selecting the state limitations period "most appropriate" to the particular claim raised by a 42 U.S.C. 1981 plaintiff. See Sup. Ct. Rule 19.

Petitioner's case demonstrates the need for this Court's exercise of supervisory authority in 42 U.S.C. 1981 employment discrimination claims since: (a) the district court concluded that New Jersey's two-year personal injury statute, N.J. Stat. Ann. 2A: 14-2 (West 1978) barred petitioner's 42 U.S.C. 1981 claims, (b) that was left undisturbed by the Third Circuit but (c) such determination conflicts with the decision in another better-reasoned case in the same district, Page v. Curtiss-Wright Corp., 332 F. Supp. 1060 (D.N.J. 1971) and (d) also with another recent Third Circuit case Wilson v. Sharon Steel Co., 549 F.2d 276 (decided Jan. 27, 1977) vacating 399 F. Supp. 403 (W.D. Pa. 1975). Furthermore, there is conflict

with other circuit court decisions, Boudreaux v. Baton Rouge Marine Contracting Co., 437 F.2d 1011 (5th Cir. 1971) and Waters v. Wisconsin Steel Works of International Harvester Co., 427 F.2d 476, 488 (7th Cir. 1970) cert. denied 400 U.S. 911.

Page, Wilson, Boudreaux & Waters, hold that in 42 U.S.C. 1981 discrimination claims of violating on employee's express or implied contractual rights, the appropriate state limitations period is that for actions on breach of contract. Boudreaux, supra, at 1017 & n. 16; Page, supra, at 1065; cf. Waters, supra, 476, 488 (applying contracts statute of limitations to 1981 claim against union for participation in employer's discriminatory scheme), and Wilson, supra, 280-281. This is indeed the only sensible result, since the employment relationship allegedly interfered with is contractual in nature.

Petitioner's requests for job reinstatement, back pay and promotion illustrate the contractual claims and the relief he seeks would "make him whole" for the damages suffered, and would restore the contractual status-quo existing prior to his termination. Stretching the limits of "personal injury," it is evident that a breach of contractual employment rights does not fit within the New Jersey "injury" statute. Indeed, the district court found this an "employment discrimination" case. (Appendix B, infra, pp.B_1).

This Court should reject the district court's reliance on an irrelevant and restrictive statute in favor of a more reasonable and less contorted and strained result. Thus the application of New Jersey's six-year general contract statute of limitations, N.J. Stat. Ann. 2A: 14-1 (West Cum. Supp. 1978) should

govern. *

A plain reading of New Jersey's statutes of limitations compel this result. Failure to correct the district court's error in this regard would also have grave implications for future federal civil rights policy and there are considerable number of lower court suits pending which will turn on a resolution of these issues. Massachusetts Trustees v. U.S., 377 U.S. 235, 237 (1964). See Sup. Ct. Rule 19.

The Reconstruction Acts are worth little if those for whose benefit these Acts were intended – people who are often poor, ignorant, or simply uninformed –

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* In Miller v. Board of Chosen Freeholders of Hudson County, 10 N.J., 398, 91 A.2d 729 (1952), the New Jersey Supreme Court held that an action for services rendered was subject to the six-year limitations period under the predecessor statute to N.J. Stat. Ann. 2A: 14-1. It is thus apparent that in New Jersey, an action for breach of other employment rights is also subject to the same six-year provision.

become entangled in procedural snarls that interdict substantive civil rights. Where a federal court is presented with two state statutes of limitation, one of which is irrelevant and restrictive to claims and very restrictive in its terms, the remedial policies underlying the Civil Rights Acts dictate the other contract-oriented and longer limitations period be selected as the "most appropriate." The district court erred in petitioner's case by selecting a two-year, rather than a more fitting six-year, provision to govern his 42 U.S.C. 1981 claim. This Court, in the interest of justice, should rectify that error.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the opinion and judgment of the United States Court of Appeals for the Third Circuit. Petitioner therefore prays his Petition for Certiorari be granted, and prays for such other relies which this Court may grant.

Respectfully submitted,

JONATHAN A. WEISS, Esq.
Legal Services for the Elderly Poor
2095 Broadway
New York, New York 10023
(212) 595-1340

Counsel for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1836

ROLAND T. DORL,
Appellant

vs.

FOSTER WHEELER CORP.,
Appellee

APPEAL FROM THE U.S. DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(D.C. Civil No. 76-857)

Submitted Under Third Circuit Rule 12(6)
February 21, 1979

Before: HUNTER and WEIS, Circuit Judges and
STAPLETON,* District Judge

Opinion filed March 20, 1979

On the Brief:

JONATHAN WEISS, Esq.
Legal Services for the Elderly
2095 Broadway
New York, N.Y. 10023

R.T. Dorl, Esq.
19 Falmouth Road
Chatham, NJ 07928
Attorney for Plaintiff

Apruzzese & McDermott
500 Morris Ave.
Springfield, N.J. 07081
Attorneys for Appellee

OPINION OF THE COURT

* Honorable Walter K. Stapleton, United States District Court for the District of Delaware, sitting by designation.

PER CURIAM

Appellant filed an employment discrimination action against the defendant alleging violations of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634; the Civil Rights Act of 1866, 42 U.S.C. 1981; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e to 2000e-17. After extensive discovery by the parties, the district court entered summary judgment for the defendant, finding that nothing in the undisputed factual allegation supported a claim that plaintiff was discharged or denied promotion on the basis of his race, color, religion, sex, or national origin. We note also the allegation that plaintiff was given a warning letter in retaliation for his filing of discrimination claims is refuted by depositions and affidavits establishing that those responsible for the letter were unaware that the plaintiff had filed charges.

In view of our affirmance based on lack of substance to the discrimination claims made by the plaintiff, we have no occasion to pass upon the district court's conclusion that New Jersey's two-year personal injury statute of limitation, N.J. STAT. ANN. 2A: 14-2, applies to actions brought under 42 U.S.C. 1981. Cf. Davis v. United States Steel Supply, Division of United States Steel Corp., 581 F.2d 335 (3d Cir. 1978; Meyers v. Pennypack Woods Home Ownership Association, 559 F. 2d 894 (3d Cir. 1977)[1]

[1] Compare Tuma v. American Can Co., 367 F. Supp. 1178, 1183-85 (D.N.J. 1973), and Page v. Curtiss-Wright Corp., 332 F. Supp. 1060, 1064-65 (D.N.J. 1971), and Bruen v. Local 492, International Union of Electrical, Radio & Machine Workers, 313 F. Supp. 387, 389-90 (D.N.J. 1969), aff'd per curiam, 425 F.2d 190 (3d Cir. 1970), with Hughes v. Smith, 389 F.2d 42 (3d Cir. 1968) (per curiam).

The judgment of the district court will be affirmed. Certain motions have been filed by appellant herein. They will be denied.

TO THE CLERK:

Please file the foregoing opinion.

Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THIRD CIRCUIT

No. 78-1836

DORL, R.T.

vs.

FOSTER WHEELER CORP.,

ROLAND DORL,
Appellant

(D.C. Civil No. 76-0857)

ON APPEAL FROM THE U.S. DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Present: HUNTER and WEIS, Circuit Judges and
STAPLETON, District Judge*

JUDGMENT

This cause came on to be heard on the record from the U.S. District Court for the District of New Jersey and was submitted under Third Circuit Rule 12(6) on February 21, 1979.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed April 18, 1978, be, and the same is hereby affirmed. Costs taxed against appellant.

ATTEST:

Clerk

March 20, 1979

*Honorable Walter K. Stapleton, United States District Court for the District of Delaware, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1836

DORL, R.T.

vs.

FOSTER WHEELER CORP.,

ROLAND DORL,
Appellant

Present: HUNTER and WEIS, Circuit Judges and
STAPLETON, District Judge*

All motions presently pending and filed by appellant in this Court be and hereby are denied in accordance with the opinion of this Court.

ATTEST:

Clerk

Dated: March 20, 1979

*Honorable Walter K. Stapleton, United States District Court for the District of Delaware, sitting by designation.

UNITED STATES DISTRICT COURT
District of New Jersey

Chambers of
Herbert J. Stern
Judge

U.S. Court House
Newark, N.J. 07101

April 17, 1978

Arthur N. Martin, Jr., Esq.
3 No. Arlington Ave.
East Orange, N.J. 07017

Richard C. Mariani, Esq.
Apruzzese & McDermott
Independence Plaza
P.O. Box 329
500 Morris Ave.
Springfield, N.J. 07081

Re: Dorl v. Foster Wheeler Corporation
Civil Action No. 76-857
LETTER-OPINION

Gentlemen:

This is an employment discrimination action, filed by plaintiff pro se on May 12, 1976, alleging violations of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 et seq., 42 U.S.C. 1981 and Title VII, 42 U.S.C. 2000e et seq.* The complaint, while far from clear, alleges that plaintiff was employed by defendant

* Plaintiff's allegations under 42 U.S.C. 1982 and 1983 have been withdrawn. See Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment.

as an instruments engineer from 1966 to September of 1972, when he was discharged by defendant. Plaintiff appears to challenge two aspects of the conditions of his employment with defendant; first, he takes issue generally with defendant's "affirmative action" program; second, he alleges a number of instances in which he was discriminated against in favor of younger, less qualified men. The relief sought includes reinstatement and back pay, along with damages to redress alleged health problems suffered by plaintiff as a result of the alleged discrimination.

On March 6, 1978, defendant moved for summary judgment on all of plaintiff's claims and, on April 5, 1978, the Court heard argument on this motion. Newly-retained counsel for plaintiff requested additional time for briefing and the Court granted this request, indicating that it would render a decision after receiving plaintiff's submissions.

At this time, having carefully reviewed the briefs, affidavits and pleadings in this action, the Court grants summary judgment to defendant on all counts.

(1) Plaintiff's Claims under the ADEA.

Plaintiff's claims under the ADEA must be dismissed for failure to bring suit within the period of limitations. Section 626(3) of the ADEA incorporates the period of the "Portal-to-Portal" Act, 29 U.S.C. 255, which provides that an action under that Act must be commenced within two years — three years in the case of a "willful violation" — of the time that the cause of action has accrued. The Supreme Court has held that this provision requires that the complaint be filed within that period; the period is not tolled by the pendency of complaints lodged with administrative agencies. See Unexcelled Chemical Corp. v. United States, 345 U.S. 59, 66 (1953).

Here, plaintiff's cause of action "accrued" at the time he was discharged by defendant, see Bonham v. Dresser, Slip. Op. No. 77-1292 (3rd Cir. 1977), September of 1972. The instant complaint was not filed until May 1976, three and one-half years later. Thus, even if the alleged violation were "willful", plaintiff's claims under the ADEA would clearly be time-barred.

(2) Plaintiff's Claims under 1981.

Plaintiff's claims under 1981 are also time-barred. Since the Civil Rights Act itself contains no period of

limitations, we must apply the period of limitations under the most analogous body of state law. See Runyon v. McCrary, 96 S.Ct. 2586 (1976). In employment discrimination suits brought under 1981, courts have generally applied state statutes of limitations governing personal injury actions. See, e.g., Reed v. Hutto, 486 F.2d 534 (8th Cir. 1972). Cf. Howell v. Cataldi, 464 F.2d 272 (3rd Cir. 1972) (affirming application of Pennsylvania statute of limitations for tort actions to Civil Rights action brought to redress alleged police misconduct.)

The statute of limitations for personal injury suits in New Jersey is two years. See N.J.S.A. 2A:14-2. Since suit was commended after expiration of this period and since plaintiff has alleged nothing which would toll this period, plaintiff's 1981 claims are time-barred.

(3) Plaintiff's Title VII Claims.

Although plaintiff has failed to comply with the Rules of this Court requiring that he set forth the material issues as to which there is no dispute, see Rule 12, Rules of the District Court for the District of New Jersey, defendant has indicated that it does not dispute plaintiff's allegations. Those allegations are as follows: (1) that

plaintiff was given a derogatory evaluation by his superior in 1970; (2) that thereafter, the company did not formally evaluate him; (3) that plaintiff was not promoted in June 1972; (4) that plaintiff had good academic credentials and authored cost-saving suggestions to his employer; (5) that plaintiff received a warning letter from defendant on June 14, 1972; and (6) that plaintiff was discharged and replaced with a person younger than himself. (Defendant's Brief at 22-23).

It is clear that these allegations even if true — as defendant has conceded for purposes of this motion — fail to set forth a claim under Title VII. That statute makes it unlawful for an employer:

> to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin.

42 U.S.C. 2000e-2(a) (1) (emphasis supplied.) There is nothing in these undisputed allegations to support a claim that plaintiff was fired or denied promotion on the basis of his race, color, religion, sex or national origin.

Accordingly, pursuant to Rule 56, Federal Rules of Civil Procedure, defendant's motion for summary judgment is granted as to each of plaintiff's claims.

Very truly yours,

/s/ HERBERT J. STERN
U.S. District Judge

Orig. to Clerk, U.S. District Court
Newark, N.J.

UNITED STATES DISTRICT COURT
District of New Jersey

ROLAND T. DORL, :
Plaintiff, : Civil Action No.
v. : 76-857
FOSTER WHEELER CORP. : ORDER
Defendant

This matter having come before the Court on defendant's motion for summary judgment, and the Court having heard argument and having reviewed the briefs, affidavits and pleadings in this action and for the reasons set forth in this Court's letter-opinion filed this date;

It is on this 17th day of April, 1978,

ORDERED that defendant's motion for summary judgment as to each of plaintiff's claims be, and it hereby is, granted.

HERBERT J. STERN
United States District Judge

Appendix B_7

UNITED STATES DISTRICT COURT
United States Courthouse
New York, N. Y. 10007

Chamber of
Constance Baker Motley

November 6, 1974

Mr. Roland Dorl
17 Mountain Avenue
Summit, N.J. 07901

Re: Application of Dorl,
74 CIV. 1677

Dear Mr. Dorl:

Please be advised that your application, referred to in your letter of October 4, 1974, is being treated as an active case sub judice.

Sincerely yours,

/s/Constance Baker Motley

CBM:rt

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Application of : ROLAND DORL for the Perpetuation of Certain Evidence and for Appointment of Counsel : 74 CIV (677)

APPEARANCES:

ROLAND T. DORL
19 Falmouth Road
Chatham, N.J. 07928
Petitioner Pro Se

KISSAM & HALPIN
By Anthony S. Genovese
120 Broadway
New York, N.Y. 10005
Attorneys for Respondent

CONSTANCE BAKER MOTLEY,
District Judge

MEMORANDUM OPINION

Roland Dorl has filed a pro se petition with this court asking that he be permitted, pursuant to Rule 27, Fed. R. Civ. P., to perpetuate the testimony of certain persons and asking that counsel be appointed for him pursuant to 42 U.S.C. 2000e. This application is denied.

Rule 27 (a) provides a mechanism whereby a person who desires to perpetuate his own testimony or that of another person "regarding any matter that may be cognizable in any court of the United States" may do so, if he can show, inter alia, (1) that he expects to be a party to such an action, (2) that he is presently unable to bring it or cause it to be brought, and (3) that perpetuation of the testimony may prevent a failure or delay of justice.

In his petition, Mr. Dorl alleges that he was employed in New Jersey by the Foster Wheeler Corporation from 1966 until September of 1972 and, during that employment, was treated in a "discriminatory" fashion

which impaired his career advancement within that company and ultimately led to his discharge.

The petition fails to specify the nature of the alleged discrimination. At a hearing held on this petition, the court observed that petitioner is white and the court further learned that his claim of discrimination apparently is that he was discriminated against by his superior because he is German. Respondent pointed out that petitioner's superior was also German.

At some point early in 1972, petitioner allegedly filed a complaint against his employer with the U.S. Equal Employment Opportunity Commission ("EEOC"). Subsequent to his discharge, he filed additional charges with the EEOC, alleging that his dismissal was an unlawful reprisal for filing a complaint with the EEOC. He also filed charges with the United States Secretary of Labor, alleging unlawful age discrimination, and with

the Attorney General of New Jersey. Since completion of the administrative processing of the federal charges is a prerequisite to institution of civil actions which petitioner alleges that he intends to bring against his former employer, he asks that testimony of certain officers of that corporation be preserved, lest it be lost during the pendency of lengthy administrative proceedings.

Since this petition was filed, the EEOC has dismissed Mr. Dorl's substantive charge of discrimination and, as a result, he is now free to file suit on that claim in federal court if he so desires. Accordingly, there is no necessity to perpetuate testimony on that claim.

Although the EEOC has not yet ruled on petitioner's claim of unlawful retaliatory discharge from his employment, the court finds that perpetuation of testimony relative to that charge is not necessary at this time in order to "prevent a failure or delay of justice." It would

appear that much of the testimony concerning the first claim would also have some bearing on the charge of retaliatory discharge, and this evidence can be garnered through the ordinary pre-trial discovery mechanism now available to Mr. Dorl upon institution of his suit on the first claim. Moreover, when the EEOC has completed the administrative processing of the retaliation claim, he will then, presumably, be free to bring suit on that charge and can amend his complaint to include such an allegation.

With respect to the claim of unlawful age discrimination, the court also finds no necessity to perpetuate testimony at this time. Not only does it appear likely that the investigation by the Secretary of Labor will disclose most of the information sought to be preserved, but the age and length of employment tenure of most of the employees sought to be examined make it appear un-

likely that they will be unavailable for examination upon completion of the Secretary's administrative investigation. Thus, any failure of justice due to lack of immediate discovery seems improbable.

In view of the court's disposition of the merits of this application, the request for appointment of an attorney in connection therewith is denied.

Dated: New York, New York
June 7, 1976

SO ORDERED

/s/ CONSTANCE BAKER MOTELY

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

R. DORL, Plaintiff
vs.
FOSTER WHEELER CORP., Defendants

No. 76-857
CIVIL ACTION

AMENDED COMPLAINT

Comes now the plaintiff, Roland Dorl, and with a claim against the defendants says as follows:

I. NATURE OF CLAIMS

This is a proceeding involving employment discrimination, seeking re-instatement, back-pay, restoration of pension rights, as well as damages. The redress of deprivation of rights secured to the Plaintiff is under Title VII of the Civil Rights Act of 1964 (as amended by P.L. 92-261, March 24, 1972); 42 USC 2000e et. seq.; also 42 USC 1981-3; The Fourteenth Amendment

to the U.S. Constitution, the laws of the State of New Jersey; the Age Discrimination in Employment Act of 1967 (ADEA); 29 USC 621 et seq. The Declaratory Judgments also sought are under 28 USC 2201 & 2202.

II. JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 USC 1331, 1332, 1343, 42 USC 1981-3, 2000e (P.L. 92-261); providing for injunctive and other relief against discrimination in employment. Jurisdiction is also conferred under the Age Discrimination Act of 1967 (ADEA) (P.L. 90-202), 29 USC 621-634, and 28 USC 1337, which incorporates by reference 25 USC 217. Jurisdiction also exists under 28 USC 2201 and 2202 as relate to declaratory judgments. The matter in controversy, exclusive of interest and costs and fees, exceeds the sum of Ten Thousand ($10,000) Dollars.

III. DEFENDANTS

The defendant corporation, (and its individual per-

sonnel), are subject to the provisions of the statutes cited and by virtue of being an employer as described in applicable sections therein. The defendant corporation, doing business in New York and New Jersey, employs over 10,000 people throughout the world.

IV. THE PLAINTIFF - 1966 to 1971

a. The Plaintiff is a U.S. citizen and legal resident of the State of New Jersey and is over the age of forty (40) years. The Plaintiff was employed by the defendant corporation as an engineer and as an estimator. At the time of hire in 1966, Plaintiff had a B.S. degree and was then completing final requirements for an MBA degree via evening study.

b. Plaintiff worked from May 1966 to approximately January, 1971 as an instrument/application engineer. He was evaluated, as were other employees, on the anniversary month of his hiring. Plaintiff's May 31, 1967

evaluation showed his outstanding abilities to include being "friendly, cooperative, conscientious...and a willing worker." Later evaluations were made, being somewhat similar in quality.

c. Between 1967 and 1969, Plaintiff made cost-saving suggestions; he was gratiously enrolled in a non-contributory pension plan; and by invitation, enrolled in a contributory pension plan. In May, 1968, the Plaintiff, also a Reserve Officer, was briefly called to active duty being given a short leave-of-absence.

d. Plaintiff's 1970 evaluation was delayed seven months and discussions with supervisor Walter Sawyer, contained derogatory and discriminatory remarks which adversely affected the 12-31-70 evaluation. Upon demonstration of inaccuracies and the discriminatory and arbitrary and capricious nature of the evaluation, David Hostedler voided the evaluation. Plaintiff's salary was

therefore not raised and he was never again evaluated. Such action limited Plaintiff's career, denied him equal employment promotion opportunity, restricted his transfer, and otherwise adversely affected his status; all being contrary to law.

e. Plaintiff was involuntarily transferred in 1971 to Estimating where his supervisor became R.S. Bienkowski, a younger man who had no formal education, and who was known by defendants to have suffered recent mental illness.

V. THE 1972 OCCURRENCES

In late 1971 and early 1972 the following events occurred:

a. Despite Plaintiff's requests for evaluation, it was obvious none would be made, even though Plaintiff's peers were being evaluated.

b. In February 1972, Plaintiff's efforts saved $22,500 by eliminating valve XCV-210 on job 11-22194

for the New Jersey Public Service Company.

c. On March 30, 1972, during a unionization attempt, defendant's president, Frank Lee, wrote all employees stating, inter alia, --- your "managers -- They understand your problems; and you can discuss with them as full equals, all matters relating to your employment---"

d. During further discrimination and threats of 'crucifixion' by Joseph Casazza; plus the lack of response to requests for discussions or transfer asked of managers Ettinger and Minihane, Plaintiff filed U.S. Equal Employment Opportunity Commission Charge TNK 2-0850. Plaintiff made defendants aware of that charge.

e. On June 5, 1972, Plaintiff's supervisor, Bienkowski was terminated and John Gwynn, a younger draftsman, wholly unskilled in estimating, was made Plain-

tiff's supervisor and he queried such action under defendant's 'Affirmative Action' regulations. On June 14, 1972, Director of Personnel, Charles Shedd, warned Plaintiff, via a letter, to have 'personal confidence' or be fired.

f. During this period, Plaintiff developed painful ulcer symptoms and was treated along with an Rx prescription by defendant's physician, as well as treated by his own personal physician.

g. Following further traumatic experiences, Plaintiff entered the hospital in early September and on his return to work, Plaintiff was terminated by a letter dated September 18, 1972, stating the lack of "ability to perform in a satisfactory manner" as reason for discharge.

h. Subsequently, on November 6, 1972, Barry Riff replaced the Plaintiff. Mr. Riff (then about age 28) was also an engineer and held an MBA degree. Further, John

Gwynn later returned to Drafting. Both other employees having jobs similar to Plaintiff's were white, had at least Associate degrees and were younger than Plaintiff.

VI. PLAINTIFF'S PROTECTED ACTIVITY

Filing of discrimination charges is protected under 42 USC 2000e - 3(a) and 29 USC 623 (d). Further various sections of 42 USC 2000e and 29 USC 623 (a) outlaws the limiting, segregating or classifying of employees in any way which deprives them of equal employment opportunities. The charges by Plaintiff of discrimination based on race color, religious creed, national origin, age, etc., constitute protected activity. Further, his discharge for filing the 1972 charge constitutes an unlawful reprisal.

VII. ADMINISTRATIVE REMEDIES

In January 1973, the Plaintiff properly filed Charge TNK 3-0333 with the EEOC, the State of New Jersey and

the U.S. Secretary of Labor. Both the EEOC charges and age charge at various times, have been investigated by government officials. In early 1974, Plaintiff filed motions for Appointment of Counsel and Perpetuation of Testimony with the New York Federal District Court, No. 74 CIV-1677. A hearing in spring 1976 led to a Memorandum Opinion (June 7, 1976) by Judge Constance B. Motley which denied both requests, noting recent EEOC Actions, then permitted Plaintiff the right to sue, and further judicially noting the "EEOC has not yet ruled on petitioner's claim of unlawful retailiatory discharge." This suit was filed initially May 12, 1976 on forms provided by the EEOC. Accordingly, Plaintiff has exhausted his administrative remedies.

VIII. PLAINTIFF'S DAMAGES AND LOSS

As a result of the conduct compiained of, plus bad faith and retaliatory discharge, Plaintiff has suffered

grievous damages to his person, and reputation; and has suffered damages in lost wages, lost vacation, lost professional association, lost medical, pension and social security benefits, lost insurances, lost promotion opportunities, and Plaintiff continues to suffer from such losses and damages. Further, Plaintiff has suffered anguish, emotional distress, bad memories, outrage, humiliation, discomfort and suffering; and Plaintiff continues to suffer such.

IX. PLAINTIFF'S DEMANDS

WHEREFORE: Plaintiff demands:

1. A trial by jury against the defendants on any and all issues herein.

2. An order restoring Plaintiff to his employment, with proper and just adjustment for pay, back-pay, vacations, promotions, pensions and rights; and any and all other benefits derived from employment.

3. Judgment against the defendants for compensa-

tory damages to fairly and justly compensate Plaintiff, but not in excess of one-half million ($500,000) dollars; plus an additional amount as punitive and exemplary damages; plus interest, costs and attorney's fees as permitted by the statutes cited.

4. A Declaratory Judgment prohibiting and forever restraining defendant, or any of their employees, officers, subsidiaries, agents, assigns, etc., from the communication, in any manner whatsoever, of bad professional or work references on the Plaintiff.

5. All such other legal or equitable relief as may be appropriate to effectuate the purposes of the acts cited, or to which the Plaintiff may otherwise be entitled.

Respectfully submitted,

/s/_____
Roland Dorl
17 Mountain Ave.
Summit, N.J. 07901

VERIFICATION

State of New Jersey)
) SS:
County of)

Roland Dorl, being duly sworn states that he is a resident of the State of New Jersey, and that he has read the foregoing complaint, and he knows the contents thereof to be true, and that the same are true of his own knowledge except as to matters therein stated to be alleged to be as information and belief; and as to those, he believes them also to be true.

/s/_____
Roland Dorl

Sworn and subscribed to me
this _____day of
_____, 1976: